

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

76-1397

NOV 29 1976

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x

UNITED STATES OF AMERICA

Plain f/Appellee

v.

APPEAL NO. 76-1397

CHARLES BUSIGO-CIFRE,

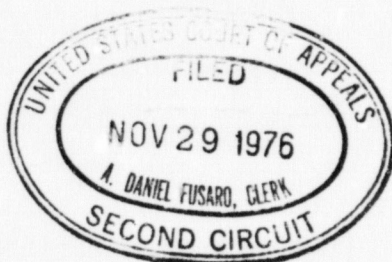
Defendant/Appellant

-----x

and appendix

BRIEF OF THE APPELLANT/DEFENDANT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK HONORABLE CHARLES METZNER,
U.S.D.J. SAT BELOW CRIMINAL NUMBER 74 CR 18



Charles Busigo-Cifre
Appellant/Defendant Pro Se
United States Penitentiary
Box PMB-79569-158
Atlanta, Georgia 30315

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TABLE OF CASES CITED:

United States vs. Pucco, 453 F.2d 539 (2d Cir 1971)-----	3
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APPENDIX (UNDER SEPARATE COVER):

ORDER DENYING MOTION DATED JULY 30, 1976-----	Appendix
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BEST COPY AVAILABLE

UNITED STATES COURT OF APPEALS,
FOR THE SECOND CIRCUIT

-----x

UNITED STATES OF AMERICA,

Plaintiff/Appellee

v.

APPEAL NO. 76-1397

CHARLES BUSIGO-CIFRE,

Defendant/Appellant

-----x

BRIEF OF THE APPELLANT/DEFENDANT

STATEMENT OF THE CASE:

This is an appeal from the denial of a Motion to Correct an Illegal sentence filed pursuant to Rule 35, Federal Rules of Criminal Procedure. (Order Denying Motion dated July 30, 1976 attached APPENDIX).

STATEMENT OF THE FACTS:

On April 30, 1974, the defendant was sentenced as a 'Second Offender' after having been found guilty by jury to the violation of Conspiracy to violate the narcotic laws.

The Government filed an 'Information' alleging that the defendant had a previous conviction for Narcotics (Sentencing Transcript P-2):

"THE CLERK: Mr. Cifre, I have an information here that states that Paul Curran, the United States Attorney for the Southern District of New York, accuses the defendant named above, also named in Indictment 74 Cr. 18, of having been previously con-

victed as hereinbelow described; that the defendant on or about the 9th of June, 1955, in the District of Puerto Rico, was duly convicted of conspiring to receive, conceal, and facilitate the transportation of narcotic drugs in violation of Title 21, United States Code, Sections 171, 173 and 174."

(Sentencing TR-3):

"THE CLERK: How do you plead?

MR. CIFRE: I did plead guilty to them.

THE CLERK: He admits, your Honor."

(Sentencing TR-12):

"MS. PERLMUTTER: Is your Honor saying you would not consider bail?

THE COURT: Not in a mandatory sentence where a man has been convicted twice for dealing with narcotics. I don't feel he should be walking the streets.

MS. PERLMUTTER: Notwithstanding the fact another defendant found guilty on two counts is out on bail?

THE COURT: That's right.

MS. PERLMUTTER: I could not implore your Honor to reconsider?

THE COURT: Not when you are dealing, as I said.....(CONTINUING ON ST: TR-13).....and Mr. Cifre has been convicted of prior dealings in narcotics, and I want to make sure he doesn't get involved in a third one.

MS. PERLMUTTER: That prior dealing was nineteen years ago.

THE COURT: I don't care when it was. He didn't learn his lesson, and I am not going to run the risk of his trying it again."

Thereafter, with no further inquiry, the Court imposed a sentence of ten (10) years as a 'Second Offender'.

ARGUMENT PRESENTED:
=====

- I. THE COURT ERRED IN DENYING A HEARING AS THE GOVERNMENT'S INFORMATION SUPPORTING THE SECOND OFFENDER STATUS OF THE APPELLANT WAS INSUFFICIENT AS A MATTER OF LAW, AND THE COURT FAILED TO SATISFY THE REQUIREMENT OF SUBSTANTIATION PRIOR TO THE IMPOSITION OF THE SENTENCE AS A SECOND OFFENDER.

The District Court misconstrued the argument in the Motion to Correct the Sentence and the case cited by this Appellant supporting the Appellant's argument.

During the course of the trial the Appellant was precluded from taking the stand in his own defense on the basis of the 19 year old conviction in Puerto Rico that is the subject of this motion. The Government expressed it's intention that they would use the 1955 conviction, not only to enhance the sentence as a second offender but would also use it to attack the credibility if the Appellant took the witness stand. This Court in United States vs. Pucco, 453 F2d 539 (2d Cir. 1971), stated that a conviction of 20 years could not be used to impeach the credibility of the defendant. However, in the instant case

the deprivation of Due Process of law is twofold. The Government not only expressed their intention of using the 19 year old conviction to impeach the Appellant if he were to have taken the witness stand (Contrary to Fuco, supra.), but also filed an information using the same 19-year old sentence to enhance the punishment on the instant case.

In denying the Motion to Correct Sentence, the Court erroneously held:

"....the case relied on by movant, United States v. Fuco, 453 F. 2d 539 (2nd Cir. 1971), is not in point. It speaks only of the staleness of a prior conviction which the government is using for impeachment purposes....."

Such was the reasoning that had been consistently applied by the Court below in all rulings pertaining to this appellant. Fuco, supra. states that it is impermissible to use a 20-year old conviction to impeach the credibility of the defendant, yet the Court below condoned the Government's decision, not only to use the 19-year old conviction to impeach the Appellant, but also used it as a basis for the information filed to support the 'Second Offender' status for doubling the penalty in the instant case. For the Court below to state that the use of Fuco, supra. is 'not on point', is contrary to the intent of this Court in their decision in Fuco.

In December, 1974, the restrictive provisions of the mandatory/minimum provisions of the sentencing statute (7237) were repealed by Congress, making parole possible for those sentenced under the statute. Several motions were filed requesting modification of the sentence under the circumstances of the repeal of the restrictive statute, all motions were

summarily denied.

The inquiry conducted by the 'Clerk of the Court' as previously noted: 'I did plead guilty to them', did not constitute a valid inquiry.

The Fifth Circuit Court of Appeals in United States vs. Garcia (No. 74-4126--February 6, 1976), vacated and remanded, stating:

"...under the drug statute requiring that the court, after filing of a second offender information and after conviction but before pronouncement of sentence, inquire of defendant whether he affirms or denies that he had been previously convicted as alleged in the information and inform the defendant that any challenge to prior conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence, it was doubtful that substantial compliance would suffice, and where also the statutory ritual was not waived, sentence would be vacated for failure to comply with the statute..."

It is noted in the instant case that THE CLERK, not THE COURT, made the limited inquiry as to the 1955 conviction being valid, and there is no provision in the law that allows the Clerk to substitute for the Court in satisfying the requirements of the statute. See further for clarification: United States vs. Noland, (CA5b 1974), 495 F.2d 529, cert den. 419 U.S. 966, 95 S.Ct. 228, 42 L.Ed. 2d 181. The requirement of a statute requiring the Court to conduct the inquiry, cannot be satisfied by having

the Clerk conduct the inquiry.

CONCLUSION AND PRAYER

WHEREFORE, WITH CAUSE SHOWN, the Appellant prays the Court order a remand for re-sentencing consistent with the provisions of a 'First Offender', and that the sentencing be had before a different Judge.

STATE OF GEORGIA)
: ss
COUNTY OF FULTON)

Respectfully submitted,

Charles Guernsey's Cfe

SWORN TO AND SUBSCRIBED BEFORE ME Charles Busigo-Cifre, Appellant

THIS 19 DAY OF NOVEMBER, 1976.

PAROLE OFFICER

Parole Officer: Authorized by the Act of July 7, 1955 to Administer Oaths (18 U.S.C. 4004).

CERTIFICATE OF SERVICE BY MAIL

I certify that I have mailed a copy of the foregoing Brief of Appellant, along with a copy of the Appendix to the office of the United States Attorney, for the Southern District of New York, U. S. Courthouse, Foley Square, New York, New York, 10007, by sending said copy by CERTIFIED MAIL-RETURN RECEIPT REQUESTED this 17 day of November, 1976.

Charles Bunsen's Copy

Charles Busigo-Cifre, Appellant

PRO SE OFFICE
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
U. S. COURTHOUSE

RAYMOND F. BURGHARDT
CLERK

FOLEY SQUARE, NEW YORK, N. Y. 10007

CHARLES BUSIGO CIFRE
BOX PMB 79569 158
ATLANTA Ga 30315

2 8-16-76

TITLE U.S.A. -v- CIFRE

DOCKET NUMBER 74 CR 18

DECISION DATE 7/30/76

JUDGE METZNER

THERE IS ENCLOSED HERewith A COPY OF A DECISION
FILED AND ENTERED IN THE ABOVE ENTITLED PROCEEDING

YOURS TRULY

RAYMOND F. BURGHARDT
Clerk of Court

By J. BLUM
Deputy Pro Se Clerk

U.S. ATTORNEY
S.D.N.Y.

Appendix

4.
MEMO. ENDORSED-

United States v. Charles Busigo-Cifre
74 Cr. 18

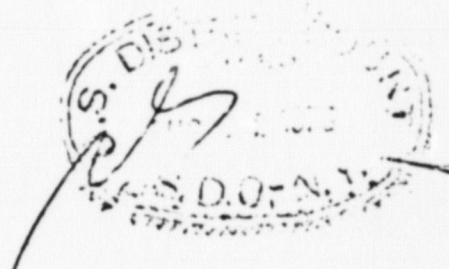
This motion to correct an illegal sentence under Fed. R. Crim. P. 35 is denied. The sentence imposed was not illegal. The case relied on by the movant, United States v. Pico, 453 F.2d 539 (2d Cir. 1971), is not in point. It speaks only of the staleness of a prior conviction which the government is using for impeachment purposes. It has nothing to do with the invalidity of such a prior sentence insofar as an enhanced sentence is concerned.

So ordered.

Dated: New York, N. Y.
July 30, 1976

Charles H. Webster

U. S. D. J.



1

CRIMINAL DOCKET

JUDGE METZNER 74 CRIM. 18

TITLE OF CASE	ATTORNEYS
THE UNITED STATES vs. (See back for names of depts.)	For U. S.: Shirah, Neiman, AUSA 264-6419
	For Defendant:

ABSTRACT OF COSTS		CASH RECEIVED AND DISBURSED			
	AMOUNT	DATE	NAME	RECEIVED	DISBURSED
67)					
Clark, J.S.: 3-7-11-21		4/20/24	Rice	5-	
Hawshel,		4/20/24	Franke	5-	
Agency.		4/20/24	Mear		10 -
XXXXXXXXXXXXX T. 21,26		4/20/24	Jones	5-	
XXXXXXXX 173,4;4701,4237		4/20/24	Tears		5 -
Sp. to import & received buy					
batics in viol. of Fed. Narcotic					
& of the U.S.(Ct.1) Receipt & purchase					
for/in(Cts.2-17)					
(Seventeen Counts)					

[illegible]

Appendix "B"

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
1	RAUL ORTEGA-ALVAREZ, a/k/a Raul Ortega-Cts.1,2,3		
2	CIRO RODRIGUEZ-CALANA, a/k/a Ciro A. Calana, a/k/a Ciro Rodriguez-1&2		
3-20-77	FRANCISCA ORTEGA-RODRIGUEZ, a/k/a Francisca Rodriguez, a/k/a Paca-Ct.1		
4	LUIS REYES-PADRON, a/k/a Luis Reyes-1&3		
5	JORGE INFUESTA, a/k/a Hueso, a/k/a George-1&3		
6	JOAQUIN R. PRADA, a/k/a El Gardego, a/k/a El Gallego-1&12		
7-20-77	HECTOR ECHEVARRIA, a/k/a Aliborio Morales, a/k/a Hector Arnold Echevarria-Ri		
8	CHARLES BUSIGO-CIFRE, a/k/a Charley Busigo, Charley Cifre, a/k/a Cifire-1&5		
9	DOMINGO DEL CRISTO-1&6		
10	ARMANDO GARCIA-ALVAREZ, a/k/a Armando Garcia, a/k/a Armando Alavarez, a/k/a Andres Alvarez, a/k/a Joaquin Gonzalez, a/k/a El Chino-1&8		
11-20-77	JOHN DOE, a/k/a Hugo El Americano, a/k/a Hugo Contero Viera, a/k/a Hugo Viera-1&9		
12	JOSE LUIS SARRIA, a/k/a Pepito, a/k/a Pepe, a/k/a Carlos Hernandez-1&10		
13	JOHN DOE, a/k/a Roberto-1		
14	JOSE OTERO, a/k/a Pepe-1&14		
15	FRANCISCO ORLANDO PEREZ, a/k/a Francisco Perez, a/k/a Paco, a/k/a Jose-1&7		
16	ORLANDO GIL, a/k/a Joaquin Gil, a/k/a Joaquin Orlando Gil y Montero, a/k/a Luis Francisco Gil-1&7		
17	Cirillo Figueroa, a/k/a Lazarito, a/k/a Lazaro, El Guajiro-1&11		
18-13-73	RIGOBERTO ROSAL-RODRIGUEZ, a/k/a Blaco Serra, a/k/a Blanquito Serra, a/k/a Rigo, a/k/a Rigo Rosal, a/k/a Roberto-1&13		
19	JOSE RAMIREZ-RAMOS, a/k/a Jose Ramirez, a/k/a Chevas-1&15		
20	JOHN DOE, a/k/a Roberto Lopez-1&16		
21-20-77	JOSE ANGEL AGUILERA, a/k/a Jose Alberto Aguilera, a/k/a El Moro, a/k/a Mauro, a/k/a Moscoso-1&17		
22-22-74	CARLOS TAPANES, a/k/a Charlie-Ct.1		

JULIO C. OTERO et al.

74 Cr. 18

PAGE THREE

DATE

PROCEEDINGS

Jan. 25-74 ECHIVARRIA - (att. present) and interpreter appearing on a writ, pleads not guilty. also was included a bail application which is denied. Writ adjourned to 2/20/74. Doft. remanded. - Metzner, J.

Jan. 25-74 Filed one sealed envelope. Enclosed in an affdt. which was submitted by the govt. pursuant to the court's direction that it explain why it would not divulge the names of witnesses. The court has read the affdt. and finds it sufficient to support the govt's position. This affdt. shall be sealed and delivered to the Clerk of the Court and not opened until further order of the court. So ordered. Metzner, J. (cashier, rm. 602).

Jan. 28-74 Filed Affidavit in Opposition to Doft's. Motions.

Jan. 28-74 Filed Govt. Bill of Particulars

Jan. 30-74 Filed Affidavit for V/H/C Ad Pros. (CIRILO FIGUEROA)

Jan. 32-74 OTERO - Filed Affidavit for V/H/C AD PROS.

Jan. 30-74 HECTOR ECHIVARRIA - Filed CJA 21 Authorization for Interpreter, original mailed AO Wash. D. C. - Metzner, J.

Jan. 30-74 HECTOR ECHIVARRIA - Filed CJA 21 Approval of payment to Gerardo Sanchez, Interpreter.

Feb. 4-74 ECHIVARRIA - Filed CJA 20 Appointment of Robert Mitchell, 51 Chambers T., N.Y. 10007 (original mailed to AO Wash.D.C.)

Feb. 6-74 ECHIVARRIA - Filed CJA 21 Authorization for Interpreter - Gerardo Sanchez -- (original mailed to A.O. Wash.D.C.) - Metzner, J.

Feb. 6-74 ECHIVARRIA - Filed CJA 21 approving payment of interpreter - Metzner, J.

Jan. 22-74 Motion to dismiss as to Carlos Tananes is granted. - Metzner, J.

Feb. 8-74 ECHIVARRIA - Filed CJA 21 Filed Authorization for Interpreter - Metzner, J.

Feb. 8-74 ECHIVARRIA - Filed CJA 21 Authorization approving payment of interpreter Gerardo Sanchez, 717 W. 177 St., N.Y. (original mailed to AO Wash.D.C.)

X → Feb. 15-74 ^{Filed} CHARLES BUSIGO CIFRE - Second Offender Information ←

Feb. 15-74 DOMINGO DEL CRISTO - Filed Second Offender Information ←

Feb. 19-74 HECTOR ECHIVARRIA - Filed Motion to Request Disqualification of Trial, Motion to request change of venue, Motion requesting adjournment and or Severance.

Feb. 19-74 HECTOR ECHIVARRIA - Filed CJA 21 Authorization of Interpreter - Metzner, J. (Original mailed to AO Wash.D.C.)

Feb. 19-74 HECTOR ECHIVARRIA - Filed Copy of CJA 21 approving payment of Interpreter Norma Seltzer, 20 E. 35th St. N.Y.

Feb. 20-74 JORGE INFESTA - Filed Notice of Appearance of John O'Connor, 2401 E. Tremont Av. Bronx, N.Y. 10461 (TA-4-7260)

Feb. 20-74 DOMINGO DEL CRISTO - Filed Financial Affidavit

DATE	PROCEEDINGS
Feb. 19-74	ORLANDO GILL with his interpreter and atty present) signs waiver of indictment and Pleads GUILTY to an information #74Cr.180 - Plea Accepted - Metzner, J.
Feb. 20-74	RAUL ORTEGA ALVAREZ & HECTOR ECHEVERRIA - through their interpreters plead Not Guilty by reason of Double Jeopardy. The remaining defendants through their interpreters plead NOT GUILTY. The following pleaded NOT GUILTY CIRO RODRIGUEZ CALANA FRANCISCA ORTEGA RODRIGUEZ JORGE INFESTA CHARLES EUSICO-CIFRE DOMINGO DEL CRISTO ARIANDO ALVAREZ ELIAS HUGO VIERA (Substituted for "JOHN DOE" a/k/a HUGO EL AMERICANO ETC.) JOSE OTERO CIRILLO FIGUEROA ROBERTO ROSAL RODRIGUEZ JOSE ANGEL AGUIUTERA The defendant JOAQUIN R. PRADA appears in Court on a writ is severed from this indictment. Following names of interpreters GERALDO SANCHEZ LENA JASLOW NELIDA HUGHS JOELLE McCALL MELVIN QUINONES The following defendants appeared in court on a WRIT CIRILLO FIGUEROA HECTOR ECHEVERRIA RIGOBERTO ROSAL RODRIGUEZ JOSE OTERO Jury empaneled and sworn -K Feb. 20-74 Trial Begun -K Feb. 22-74 RAUL ORTEGA-ALVAREZ - Courts Exhibits received, ordered sealed - Metzner, J. Feb. 25-74 HECTOR ECHEVERRIA - Filed true copy from U.S.C.A. for leave to proceed in forma pauperis to for a writ of mandamus - Anderson, Mansfield, Oakes, J. Feb. 22-74 Filed Memo-endorsed on HECTOR ECHEVERRIA'S Motion dtd 2/19/74--This motion was denied record in open court. So ordered - Metzner, J. (w/n) Feb. 25-74 JORGE INFESTA - Filed CJA Approving payment of Counsel John Connor, 2401 E. Tremont A. Bronx, N.Y. - Metzner, J. Feb. 27-74 RAUL ORTEGA ALVAREZ - Filed memo-endorsed on Motion--Motion denied with leave to renew at xxx end of the governments case. So ordered - Metzner, J. Feb. 27-74 Filed one envelope ordered sealed by the Court, Metzner, J. Mar. 1-74 Filed Envelope Court Ordered Sealed w/Cashier - Metzner, J. Mar. 1-74 Filed Affidavit for Writ of Habeas Corpus AD Testificandum Issues. Mar. 1-74 Filed Petition for Writ of Habeas Corpus AD Testificandum to produce Nelson

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74 CR. 10 U.S.A. v. RAUL ORTEGA ALVAREZ ET AL

METZNER, J.

DATE	PROCEEDINGS
2-20-74	Trial Severed as to JOAQUIN R. PRADA, and continued as to: RAUL ORTEGA ALVAREZ; CIRO RODRIGUEZ CALANA; FRANCISCA ORTEGA RODRIGUEZ; JORGE INFESTA; HECTOR ECHEVARRIA; CHARLES BUSICO CIPRE; DOMINGO DEL CRISTO; ARMANDO ALVAREZ; ELIAS HUGO VIERA; JOSE ORTERO; CIRILLO FIGUEROA; RIGOBERTO ROSAL RODRIGUEZ; JOSE ANGEL AGUILERA — METZNER, J.
2-21-74	Trial continued. Gustave Hoffman (interpreter) Sworn — Metzner, J.
2-22-74	Trial continued.
2-25-74	Trial continued. Juror #9 has been excused from any further service in this matter and alternate Juror #1 is now sworn and replaces Juror #9. — Metzner, J.
2-26-74	Trial continued. Miss Enid Pagan (interpreter) sworn. The witness MIGUEL RODRIGUEZ having been brought to Court on a writ of H/C. — Writ Satisfied — Metzner, J.
2-27-74	Trial continued. Alternate Juror #5, excused from any further service in this matter with consent of the defense counsel — Metzner, J.
2-28-74	Trial continued — Metzner, J.
2-27-74	CIRILLO FIGUEROA — Filed CJA 21 — Authorization of Transcript — Metzner, J. (original mailed to ADM. Off. Wash, D.C.)
2-37-74	JOSE ANGEL AGUILERA — Filed CJA 21 — Authorization of Transcript — Metzner, J.
2-27-74	HUGO CONTERO VIERA — Filed CJA 21 — Authorization of Payment of Transcript for Trial — Metzner, J. (original mailed to AO Wash, D.C.)
2-27-74	HECTOR ECHEVARRIA — Filed CJA 21 — Authorization of Payment of Transcript for Trial — Metzner, J. (original mailed to AO Wash, D.C.)
3-7-74	RODRIGUEZ, FRANCISCA & CIRO Rodriguez Calana — Filed Motion for Issuance of Subpoena — Metzner, J.
3-1-74	Trial continued — Metzner, J.
3-4-74	Trial continued
3-5-74	Trial continued Emma Tolmach sworn in as interpreter — Metzner, J.
3-6-74	Trial continued — Interpreter Norma Seltzer and Margarita Mensa duly sworn. Def. RAMIRO GONZALEZ Appeared in Court on a writ. The record also show that Defts. ECHEVARRIA-RIGOBERTO ROSAL RODRIGUEZ-CIRILLO FIGUEROA and JOSE ORTERO have all been appearing in Court on writs. — Metzner, J.
3-7-74	Trial continued — Interpreter Jacqueline Montague — Trial adjourned to 3/11/74 — Metzner, J.
3-7-74	CIRO RODRIGUEZ-CALANA and FRANCISCA ORTEGA RODRIGUEZ — Filed Motion for Issuance of Subpoena
3-13-74	Filed Affidavit for Writ of Habeas Corpus ad Testificandum Issued.
3-14-74	Filed-ELIAS HUGO VIERA — MEMORANDUM OF LAW
3-14-74	Filed-DOMINGO DEL CRISTO — Motion for Judgment of Acquittal and Memorandum of Law.

DATE	PROCEEDINGS
3-14-74	RIGOBERTO ROSAL RODRIGUEZ - Filed Memorandum of Law
3-14-74	ARMANDO GARCIA ALVAREZ et al. - Filed Memorandum of Law
3-14-74	RAUL ORTEGA-ALVAREZ et al - Filed Memorandum of Law.
3-14-74	CHARLES BUSICO CIPRE - Memorandum of Law
3-14-74	Filed Government Memorandum of Law.
3-14-74	JOSE ANGEL AGUILERA - Filed Memorandum of Law, for Judgment of Acquittal
3-14-74	HECTOR ECHEVERRIA - Filed Memorandum of Law
3-14-74	Filed Govt. Affidavit in Response Deft. Echeverria's Motion.
3-14-74	Filed CIRILO FIGUEROA - JOSE OTERO - Filed Defts. Memorandum of Law.
3-15-74	RAUL ORTEGA ALVAREZ - Filed Deft's Requests to Charge
3-15-74	HECTOR ECHEVERRIA - Filed Motion to Requests to Charge.
3-15-74	CIRO RODRIGUEZ-CALANA and FRANCISCA ORTEGA RODRIGUEZ - Filed Defts' Request to Charge.
3-15-74	ARMANDO GARCIA ALVAREZ - Requests to Charge on behalf of the Deft.
3-15-74	JOSE ANGEL AGUILERA - Filed Requests to Charge
3-15-74	" " " " Additional Requests to Charge
3-15-74	CHARLES BUSICO CIPRE - Filed Deft's Request to Charge.
3-15-74	Filed Govt's Requests to Charge.
3-11-74	Trial Continued - Hearing on motion to suppress as to Raul Ortega Alvarez. Hearing Held - Motion denied. Trial continued - Govt. Rests - METZNER, J.
3-13-74	Motion to dismiss count Nine as to <u>Hugbo Elias Viera</u> is granted
"	Motion to dismiss Counts <u>ONE</u> and <u>THIRTEEN</u> as to <u>RIGOBERTO ROSAL RODRIGUEZ</u> is granted
Mar 14-74	Trial Continued - Metzner, J.
3-19-74	Filed Copy submitted from S.D. of Florida - Hearing on Plea
3-19-74	Filed copy of U.S.C.A 2nd Circuit Petition for a Writ of Mandamus and Prohibition.
3-19-74	Filed CIPRE & ALVAREZ - Govt. Memorandum of Law
3-19-74	Filed Co. et. Memorandum of Law
3-19-74	Filed Govt's Proposed Examination of Prospective Jurors.
Mar. 20-74	Filed one envelope sealed by order of the court. Metzner, J.

V. RAUL ORTEGA ALVAREZ

74 CRIM 18

METZNER, J.

DATE	PROCEEDINGS
Mar 15-74	Trial Continued
Mar 18-74	Trial continued. The Court strikes from this indictment Overt Acts #23 and #31. All summations completed - Metzner, J.
Mar 19-74	Trial continued. Jurors requested - Metzner, J.
Mar 20-74	Trial continued - Jurors continue to deliberate. Jurors return verdict. VERDICT: PAUL ORTEGA - GUILTY on counts 1, 2 & 3. Bail continued. Presentence report ordered. Sentence April 22/1974. See minutes of proceedings as to bail conditions. CHARLES BUSICO CIERE - GUILTY on counts 1. Not guilty on Ct. 5. Presentence report ordered. Sentence April 22, 1974. DEFENDANTS REMANDED ARMANDO ALVAREZ - GUILTY on Counts 1 & 8. Bail increased to \$15,000.00 defendant has to Friday Mar. 22, 1974 at 12 Noon to post increased bail. Presentence report ordered. Sentence April 22, 1974. See minutes of proceedings as to Bail conditions JOSE OTERO - GUILTY on Counts 1 and 14. Presentence report ordered. Sentence April 22, 1974. Defendant produced in Court on a Writ. CIRILLO FIGUEROA - GUILTY on Counts 1 and 11. Presentence report ordered. Sentence April 22, 1974. Defendant produced in Court on a Writ. JORGE INFESTA - GUILTY on counts 1 and 3. Presentence report ordered. Sentence April 22, 1974. See minutes of proceedings as to bail conditions. DOMINGO DEL CRISTO - GUILTY ON counts 1 and 6. Presentence report ordered. Sentence April 22, 1974 - DEFENDANT REMANDED CIRO RODRIGUEZ CALANA - GUILTY on Counts 1 and 2. Presentence report ordered. Sentence April 22, 1974 - See minutes of proceedings as to bail conditions. FRANCISCA RODRIGUEZ CALANA - NOT GUILTY on Count 1. HUGO VIERA - NOT GUILTY on Ct. 1. Defendant exonerated from bail. JOSE AGUILERA - NOT GUILTY on Ct. 1 and Ct. 17. HECTOR ECHEVARRIA - NOT GUILTY Counts 1 and 4. Defendant produced in Court on a Writ - METZNER, J. Mar 21-74 CHARLES BUSICO CIERE and DOMINGO DEL CRISTO - Filed ORDER - Defts were found GUILTY and face mandatory minimum sentence of 10 yrs. as second offenders. Both Defts. remanded w/o bail pending sentence.....METZNER, J. Mar 20-74 PAUL ORTEGA - Filed Letter dtd 3/1/74 from Morton N. Schwartzman, M.D. 555 Biltmore Way, Coral Gables, Fla. 33134. (re: Children). Mar 20-74 Filed Court Exhibit 12 Verdict as written by Jurors. 3-25-74 JOSE OTERO - Filed ORDER that the Warden in Federal House of Detention grant permission to defendant to marry NANCY M. AUGIERE upon presentment of a duly authorized clergyman at a time permitted by institution and consented by U.S. At.

r. 18

METZNER, J.

DATE	PROCEEDINGS
3-22-74	Filed (ARMANDO ALVAREZ) Appearance Bond sum of \$15,000.00
3-27-74	Filed for deft. DEL CRISTO - Affidavit and Notice of Motion for Judgment of Acquittal returnable 3/29/74 at 10AM.
3-27-74	JUAN CONTRERAS - Filed Writ of Habeas Corpus Ad Testificandum Issue.
4-12-74	Filed Government Affidavit in opposition to Paul Ortega Alvarez's motion for the conspiracy charge in Count 1 of Indt. etc.
4-16-74	Filed Transcript of record of proceedings dtd. 2/20, 21, 22, 25, 1974
4-16-74	" " " " " " " 2/26, 27, 28, 3/1, 4, 5, 1974
4-16-74	" " " " " " " 3/14, 15, 18, 19 and 20 1974
4-16-74	" M " " " " " 3/6, 7, 11, 12, 13, 1974
4-1-74	JOSE RAMIREZ - Filed PRB w/o Security in the sum of \$5,000 - Metzner, J.
4-17-74	PAUL ORTEGA ALVAREZ - Filed Memo-endorsed on Affidavit dtd. 4/2/74 -- As indicated Court denied deft.'s motion for a directed judgment of acquittal -- No affidavits were submitted to support the deft.'s contention. Rather, reference is made in counsel's brief to the transcript of the change of plea and sentence, all of which occurred on the same day. There was nothing in this transcript that would warrant holding of an evidentiary hearing. Motion denied. So ordered - METZNER, J. (m)
4-22-74	DOMINGO DEL CRISTO - The deft. admits to the 2nd offender information - Metzner, J.
3-27-74	DOMINGO DEL CRISTO - Filed Notice of Motion for a Judgment of Acquittal returnable 3/29/74 and Memo-endorsed -- Motion denied So ordered - METZNER, J. (m/n)
4-22-74	JOSE OTERO - Filed CJA Authorization of Joell McCall, Interpreter 300 E. 140th St., N.Y. (original mail to AO Wash. D.C.)
4-22-74	Filed CJA 21 Approving authorization on the above -- METZNER, J.
4-22-74	Filed (ORTEGA ET AL) CJA Authorization of Jacqueline Montague, 209 E. 56th St., N.Y. (original mailed AO Wash. D.C.)
4-22-74	Filed Copy of CJA 21 Approving payment on the above -- Metzner, J.
4-22-74	Filed CJA 21 -- JOSE OTERO, CIRILLO FIGUEROA -- Authorization of Interpreter Emma Tolson 7 Davison St., E. Rockaway, N.Y. (original mailed to AO Wash. D.C.)
4-22-74	Filed Copy of CJA 21 on the above approving payment (METZNER, J.)
4-22-74	Filed CJA 21 for OTERO & FIGUEROA - Authorization of Interpreter Yolanda Francophon 2041 Lafayette Av., Bx. N.Y. (original mailed to AO Wash. D.C.)
4-22-74	Filed Copy of CJA 21 on above approving payment -- Metzner, J.
4-22-74	JOSE OTERO - Filed CJA 21 Authorization of Interpreter - Joseph I. Stone, 277 Bway, N.Y. (original filed AO Wash. D.C.)
4-22-74	Filed Copy of CJA 21 Approving payment on the above -- METZNER, J.
4-22-74	HECTOR ECHEVERRIA - Filed CJA 21 Authorization of Interpreter Leonardo Vidal, 183 St., N.Y. (original mailed to AO Wash. D.C.)
4-22-74	Filed Copy of CJA 21 approving payment on the above - Metzner, J.

DATE	PROCEEDINGS
4-22-74	CIRO RODRIGUEZ CALANA - Filed Notice of Appeal to U.S.C.A. 2nd Circuit from Judgment dated 4/22/74 as to sentence imposed. (mailed to Deft. 14-1/2 Third St. Elizabeth, N.J., U.S. Atty's Office.
4-22-74	ARMANDO ALVAREZ - Filed Notice of Appeal to U.S.C.A. 2nd Circuit from Judgt. entered on sentence imposed. mailed to Armando Alvarez 2431 SW 77 st. Miami, Fla., U.S.A.
4-22-74	ARMANDO ALVAREZ - Filed Personal Recognizance Bond pending appeal, sum of \$50,000 Public Service Mutual Ins. Co.
4-22-74	ARMANDO ALVAREZ - Filed Personal Recognizance Bond pending appeal, sum of \$75,000.
4-23-74	JORGE INFESTA - Filed Notice of Appeal to U.S.C.A. from final Judgment 4/22/74 copies mailed to Deft. F.H. of Detention, 427 W.St., N.Y. and U.S. Atty.
4-23-74	DOMINGO DEL CRISTO - Filed Notice of Appeal to U.S.C.A. from the final Judgment entered 4/22/74 - Copies mailed to Deft. Fed. House of Det. 427, W.St., N.Y., U.S.A.
4-24-74	DOMINGO DEL CRISTO - Filed Personal Recognizance Bond pending appeal in the sum of \$25,000.00 secured by \$2,500.00 Cash.
4-22-74	CIRO RODRIGUEZ CALANA - Filed JUDGMENT (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SIX (6) YEARS on each counts (1) and (2) to run concurrently with each other - METZNER, J. (copies issued)
4-22-74	JORGE INFESTA - Filed JUDGMENT (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of EIGHT (8) YEARS on each of counts (1) and (3) to run concurrently with each other. METZNER, J. (copies issued)
4-22-74	DOMINGO DEL CRISTO - Filed JUDGMENT (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TEN (10) YEARS on each of counts (1) and (6) to run concurrently with each other - METZNER, J. (copies issued)
4-22-74	ARMANDO ALVAREZ - Filed JUDGMENT (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of EIGHT (8) YEARS on each of counts (1) and (8) to run concurrently with each other - METZNER, J. (copies issued.)
4-22-74	JOSE OTERO - Filed JUDGMENT (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS on each of counts (1) and (14) to run concurrently with each other, and to commence upon completion of his imprisonment under the existing sentence now serving. METZNER, J. (copies issued)
4-22-74	CIRILLO FIGUEROA - Filed JUDGMENT (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of EIGHT (8) YEARS on each of counts (1) and (11) to run concurrently with each other and to commence upon completion of his imprisonment under the existing sentence now serving. METZNER, J. (copies issued)

DATE	PROCEEDINGS
4-23-74	CIRO RODRIGUEZ CALANA - Filed Personal Recognizance Bond pending appeal in the sum of \$25,000.00 secured by \$3,000.
4-25-74	DOCTOR ECHEVARRIA - Filed CJA 21 Authorization for Transcript from S.D. Court Reporters (original mailed to AO Wash.D.C.)
4-25-74	HUGO CONTERO VIEIRA - Filed CJA 21 Authorization of Transcript from S.D. Court Reporters (original mailed to AO Wash.D.C.)
4-25-74	CIRILIO FIGUEROA - Filed CJA 21 Authorization of Transcript from S.D. Court Reporters (original mailed to AO Wash.D.C.)
4-25-74	JOSE ANGEL AGUIRRA - Filed CJA 21 Authorization of Transcript from S.D. Court Reporters (original mailed to AO Wash.D.C.)
4-25-74	Filed Transcript of record of proceedings dtd 2/6/74.